



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 12, 1998

Mr. J. Robert Giddings  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2981

OR98-2679

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119452.

The University of Texas System received a request for information relating to "the development of a uniform grievance procedure for faculty at all component institutions in the University of Texas System from September 1, 1995 to the present" and information related to "the development of a uniform grievance procedure at the University of Texas at San Antonio from September 1, 1995 to the present." You submit representative samples of information responsive to the request<sup>1</sup> but seek to withhold all or part of the information under sections 552.107(1) and 552.111 of the Government Code.

Section 552.111 of the Government Code excepts interagency and intraagency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 at 5 (1993), this office held that

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<sup>1</sup>In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

In Open Records Decision No. 429 (1985), this office indicated that information protected by section 552.111 must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283 (1981), 273 (1981). This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 552.111. Open Records Decision No. 464 (1987). *See Wu v. National Endowment of the Humanities*, 460 F.2d 1030 (5th Cir.), *cert. denied*, 410 U.S. 926 (1972). Notably, drafts of documents *intended for release* may be withheld under 552.111. Open Records Decision No. 559 (1990).

Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. ORD 615 at 5. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982).

We have examined the information you submitted. We have marked those portions of the information which you may withhold under section 552.111. Since we have permitted you to withhold under section 552.111 the information you also sought to withhold under section 552.107(1), the attorney-client privilege, we need not address your claim under section 552.107(1).<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



William Walker  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>You also cite section 552.101 of the Government Code as a claimed exception. We understand your reference to section 552.101 as another claim for exception of material under the attorney-client privilege. As explained above, in view of our resolution of your request under section 552.111, we do not address your claims under the attorney-client privilege.

WMW/ch

Ref.: ID# 119452

Enclosures: Submitted documents

cc: Ms. Shirley Goldsmith  
Texas Faculty Association  
6021 Westcreek Drive  
Fort Worth, Texas 76133  
(w/o enclosures)